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March 15, 2005

Ms. Marlene Dortch, Secretary Federal Communications Commission The Portals, TW-A325 445 12th Street, SW Washington, DC 20554

Re: Notice of Ex Parte Presentation –BellSouth DSL Preemption Proceeding

(CC Docket No. 03-251)

Dear Ms. Dortch:

On March 14, 2005, I spoke with Ms. Jessica Rosenworcel, Legal Advisor to Commissioner Copps, regarding EarthLink, Inc.'s position the above-referenced docket. We discussed the BellSouth proceeding on preemption of state actions that address the practices of incumbent LECs tying local exchange voice service with DSL service. As a purchaser of DSL service, EarthLink is directly affected by this practice and it prevents EarthLink from ordering DSL where the end user is not an incumbent LEC voice customer. EarthLink argued that, if the Commission were to preempt state action, then the Commission should raise in a Notice the question of whether the incumbent LEC tying practice is an unjust or unreasonable practice under Section 201 of the Communications Act. EarthLink argued that the tying practice effectively prevents VoIP services from being offered via the telephone network and can hinder wireless intermodal competition as well, since customers would be forced to "buy through" the local exchange service in order to obtain the DSL connection.

Pursuant to the Commission's rules, one copy of this memorandum is being filed electronically in the above-referenced docket for inclusion in the public record. Please do not hesitate to call me if you have any questions.

Respectfully submitted,

/s/

Mark J. O'Connor Counsel for EarthLink, Inc.

CC: Jessica Rosenworcel (via email)